

**FLOOD CONTROL ADVISORY BOARD
MINUTES**

January 23, 2002

The monthly meeting of the Flood Control Advisory Board was called to order by Vice Chair Scott Ward at 2:03 p.m. on Wednesday, January 23, 2002.

Board Members Present: Scott Ward, Vice Chair; Shirley Long, Secretary; Mike Saager; Ray Acuna (for Tom Callow), Ex Officio; Paul Cherrington, Ex Officio.

Board Members Absent: Hemant Patel, Chairman; Melvin Martin.

Staff Members Present: Michael S. Ellegood, Chief Engineer & General Manager; Julie Lemmon, General Counsel; Tom Johnson, Deputy Chief Engineer; Dick Perreault, CIP/Policy Branch Manager; Tim Phillips, Project Manager; Marilyn DeRosa, Project Manager; Michael Alexander, Management Analyst; Jim Schwartzmann, Lands Division Manager; Gene Arnold, Right-of-Way Coordinator; Kelli Sertich, Project Manager; Angeline Fowler, PIO; Farhad Tavassoli, Planning Intern; Kathy Smith, Clerk of the FCAB; Lorena Mosso, Acting Administrative Coordinator.

Guests Present: Dan Albert; Kofi Awumah, Huitt-Zollars; Roger Baele, David Evans & Assoc.; Dan Frank, Dibble & Assoc.; Ed Fritz, MCDOT; Teri George, DEA; Bil Haas, Primatech; Joe Hines; Kevin Kemmerzell, Montgomery Watson; Tim Morrison, HDR Engineering; Bryan Patterson, City of Chandler; Sandy Story, City of Chandler; Mike Sylvain, Brooks, Hersey & Assoc.; Linda Walsh, Consultant Engineering; Patrick Wolf, Entellus, Inc.

1) RECOGNITION OF THE FCD EMPLOYEE OF THE QUARTER

Jim Schwartzmann, Lands Division Manager, introduced Gene Arnold, Right-of-Way Coordinator for the Lands Division, as the Employee of the Quarter for the fourth quarter of 2001.

2) APPROVAL OF THE MINUTES OF THE MEETING OF DECEMBER 5, 2001

One correction was noted on page 16 of the Minutes. The Secretary of the Board should be Shirley Long rather than Mike Saager.

ACTION: It was moved by Mr. Saager and seconded by Ms. Long to approve the minutes as corrected. The motion carried unanimously.

3) QUEEN CREEK ROAD BASIN IGA WITH THE CITY OF CHANDLER

Tim Phillips, Project Manager, presented IGA FCD 2002A001 and requested that the Advisory Board endorse and recommend that the Board of Directors adopt this IGA related to the Higley Area Drainage Plan.

The Higley Area Drainage Master Plan was initiated in 1998 in order to look at the potential need for flood control infrastructure within a fairly large region of Mesa, Chandler and Gilbert. Dibble and Associates was contracted to conduct the study, which was completed in 2000. In January 2001, the Flood Control Advisory Board adopted Resolution FCD 2001R003, which adopted the Study. The Board of Directors adopted this Master Plan in March 2001.

The Study looked at all the drainage that was moving from the east towards the west that gets ponded behind the Eastern Canal, the Consolidated Canal, and the railroad tracks. The Study sought to find a solution to reduce or eliminate those floodplains and provide a 100-year level of protection to the respective communities. This IGA is strictly for the acquisition of land and maintenance for the Queen Creek Road Basin site, not for implementation of any of the features.

Based on the appraised value of \$66,000 per acre, the preliminary costs for the basin site is \$4.6 million for the land cost and will be 50/50 cost-shared with the City of Chandler.

Mr. Ellegood noted that Bryan Patterson with the City of Chandler is in attendance and would be available to answer any questions the Advisory Board may have.

Discussion:

Ward: I live in the City of Chandler and do a lot of work there. One thought I had is that the Chandler Municipal Airport is just north of the site, and knowing the City of Chandler has quite a bit of effluent from their wastewater treatment plant and could probably irrigate this site with effluent, I recommend that a bird management or bird mitigation study be looked at. This is right in the flight path of the Chandler Airport. Chandler is cognizant of development and field development within the path. Just so maybe you or the Chandler people can talk with the manager at the Airport and coordinate that study.

Phillips: Absolutely. We tend to build a lot of basins or have basins sited around airports, particularly Williams Gateway and the EMF Basins, so we are familiar with the bird strike issues and FAA restrictions on that. As part of the design process, a task will be included to look into whether the water in the basin will discharge quick enough so as not to promote any kind of habitat and birds stopping at that site.

Saager: Who is the seller on this piece of property?

Phillips: My understanding is Kevin Peterson owns most of the property.

Saager: Does anybody on staff know who owns the property? Mr. Ellegood, do you know who owns the property?

Ellegood: No, sir, I don't.

Saager: If you were buying this property yourself, Tim, would you know? If it was your money and not taxpayer money, would you know? If you were paying \$4.6 million, would you know who is selling the property, if it was your money?

Phillips: Let me restate my earlier response, Kevin Peterson is the landowner of the property.

Saager: That's not what I asked you. Would you pay \$4.6 million to Kevin Peterson if you weren't sure? You are the only one on staff that's acknowledging that you know who the seller of the property is. My point is, we're missing something. We're representing the taxpayers here. We need to know these things. Is it 70 net acres or 70 gross acres?

Phillips: The area that is shown in red is 70 gross.

Saager: Why are you buying 70 gross acres instead of 70 net? You don't buy 70 gross acres.

Ward: Minus to-be-dedicated right-of-way.

Saager: Is that what it is?

Ward: I don't know. I throw out that debate as well. Is that gross acres or should we be buying net like you suggested minus the to-be-dedicated right-of-way?

Saager: What's 3 acres times 66,000?

Ellegood: 198.

Saager: If Shirley, Jeff [*sic*], or I did business like that, we'd be out of business. To me \$200,000 is a lot of money and it's a lot of money to the taxpayers. It's not about dollars - it's about what we're representing. We're representing the public that is paying taxes. How many appraisals do we have on this property?

Phillips: We have the one appraisal that was done for the property.

Saager: If you were paying \$4.6 million for the property, would you just get one appraisal?

Wouldn't we get maybe a couple of appraisals? This is the fourth time since I've been a member of the Flood Control Advisory Board that I suggested that we get more than one appraisal. So you are saying we have one appraisal?

Phillips: That's all I know of.

Saager: Mr. Ellegood, do you know of any other appraisals, or do any of your staff members?

Ellegood: Typically when we . . .

Saager: Mike, you've given this speech before. We discussed at our last meeting that we were going to look into getting more than one appraisal. Here we're spending \$4.6 million buying gross acreage on a piece of property with one appraisal. It just seems like we're missing it.

Who's negotiating this deal for the County?

Ellegood: Our Lands Division Manager, Jim Schwartzmann.

Saager: Is he here?

Ellegood: He'll be here in just a minute. He'll probably be able to answer a number of your questions.

Saager: If we're representing the taxpayers, and we're kind of their voice in this thing, and I recognize from the vote of the Board of Supervisors, as does Shirley and Paul from the last meeting regarding Paradise Valley, that we are simply an advisory board. The buck doesn't stop here - we're just making an advisement. But still, it takes me an hour and 20 minutes to get here from Mesa and I'm here representing the public. It just seems like if we're spending that kind of money, why isn't the person who's negotiating this deal not even at this meeting? Am I missing something?

Phillips: We have not negotiated the deal with Kevin Peterson yet because the first step in the process is to have an understanding with the City of Chandler, that's what the IGA is . . .

Saager: You're asking us to approve a deal that hasn't even been negotiated.

Phillips: What I'm asking for is approval of the IGA that lays out the deal. The ultimate land acquisition still has to go the Board of Directors for approval, so the actual purchase price and the deal hasn't yet been made with the landowner.

Saager: Then why are we voting on it today?

Phillips: In order to go forward, I need to have an Intergovernmental Agreement with the City of Chandler in order to take advantage of the cost share.

Saager: We must be missing something. There's been contingency and/or feasibility and/or free look periods in real estate transactions, why don't we put this thing in escrow contingent upon what we are talking about? And, if this gentleman who just walked in is negotiating this deal and that's what we are paying him for as taxpayers, why isn't he acting in the best interest of the public?

Jim Schwartzmann: You have a question regarding . . .

Saager: I've had a bunch of questions, but why don't you just answer the one. Why don't we put this in a contingency feasibility period until we reach an agreement with the City of Chandler and

make it contingent upon reaching an agreement with the City of Chandler before we vote for something that hasn't even been solidified yet?

Schwartzmann: Typically what we do is we get appraisals on properties establishing . . .

Saager: Excuse me, you only have one on this. You said appraisals - you've only got one.

Schwartzmann: If this is a single property, in this particular case . . .

Ward: Is there just one owner of this property?

Phillips: My understanding is that Kevin Peterson is the sole owner of the property.

Schwartzmann: I'd have to look at the file on this property, I'm not positive about all the particulars. We don't put properties in contingencies or in escrows until we make offers on properties. Then we either buy it or we don't buy it depending on what the owner determines he wants to do with it. There are times we would purchase the property under eminent domain or condemn the property. Feasibility studies are not studies that we conduct in our acquisition program. We have done feasibility studies under our . . .

Saager: Feasibility is part of the inspection period. You're the real estate expert for the Flood Control Advisory Board?

Schwartzmann: Yes.

Saager: Feasibility is not like a phase I or phase II, it's a free look period until you cut a deal with the City of Chandler before the Advisory Board comes down here and takes their man-hours and votes on something.

Long: Preliminary.

Saager: Preliminary, Shirley you're right.

Schwartzmann: The feasibility study I'm talking about are the feasibility studies that we conduct on properties that we have . . .

Saager: But that wasn't the question I asked.

Ward: Mike, let this gentleman speak, please. Tell us your procedure would you please.

Schwartzmann: For acquisition of properties?

Ward: Yes.

Schwartzmann: We identify properties that are needed for projects by the Project Manager; we delineate them and get the acreage; we do a title report to determine who the owner is on the property; and we then have a list of 12 appraisers that we have on contract and select one of the appraisers to conduct an appraisal on the property. Once the appraisal is done, we have an offer letter that we offer to the owner of the property based on the appraised value.

Ward: How many appraisals on each property do you do, Jim?

Schwartzmann: One appraisal.

Ward: What does that cost?

Schwartzmann: It varies. On property this size the appraisal would probably cost around \$4,500 or somewhere in that range. Smaller properties, if we appraise some of the houses, for instance the Aguila acquisitions, they were about \$700 per property. So it ranges probably from \$500 up to \$8,000 or \$9,000 for a very large property.

Ward: Who picks the appraiser?

Schwartzmann: We have a chief appraiser for Public Works and he generally selects one of the appraisers on the list.

Ward: I've got to agree with Mike. I think if we're spending \$4.6 million of our money and Chandler's money, maybe we should rethink this and require two or three appraisals on that property. I'm going to state my personal opinion, because I run my business saving nickels. I think Mike's thought of buying net rather than gross is a very good one. And that's why we are here to help you because I think the to-be-dedicated right-of-way on McQueen Road is going to run right to the San Tan Freeway, so that is going to be a major carrier, almost like Alma School Road. When Mr. Patterson comes up, maybe he can talk about the right-of-way. That's probably going to be 130 feet of right-of-way that we surely don't want to pay for. Queen Creek Road is a major carrier as well. Being a land developer myself, this property is in the airport master plan

and the Southeast Chandler Area Plan is earmarked for industrial growth. There's got to be probably 1,000 to 2,500 acres of earmarked industrial property that is in a two-mile radius of the airport.

Schwartzmann: Typically on the appraisals that I've seen, and I don't recall on this one specifically, if there are right-of-ways that are not existing as far as a constructed roadway, but are there in title or land ownership, the appraiser will take that into account and he would discount or disregard the value on that. A second issue is that multiple appraisals cause us problems periodically. If we need to condemn a property, our gauge of value when we get to court or an Order of Immediate Possession where we would take possession of the property is that we have to pay the highest price in terms of money for the property. We typically don't get multiple appraisals until we do get into a condemnation situation, because if we do, they are all available for discovery and we've been in situations where we had our first appraisal done and the second one was higher and the third one may be in between. Inevitably, we will have to use the highest appraisal and defend why it should be lower in a court situation. We typically don't do that. We could get multiple appraisals, but there are some problems with doing that. I also believe that it would be difficult for us if we got two appraisals, say one at \$4.6 million and a second one of \$5 million. I don't believe we could realistically go back and offer \$4.6 million, particularly if we had already approved it.

Long: Why?

Schwartzmann: Because of the condemnation element in our acquisition process. The law states that we have to offer the highest price in terms of money. That is in the state law.

Long: We should get that changed.

Schwartzmann: We've tried to change some of those things, but there are a lot of elements that we have no control over.

Saager: Just to conclude, that to me is absolutely the most absurd policy that I've ever heard of since being on any board, commission and/or city council in my lifetime. How many bids did we get when we built this building? I hope we just didn't get one and use the taxpayers' money. I would venture to say you got at least three. Appraisals can be used in negotiations and so on and so forth. That's why you get more than one appraisal. I move, Mr. Chairman, until we get a punch list and discuss where we're at and what things have been done or not been done, and that we're getting this at the best price we can for the taxpayers, that we extend this conversation until the next meeting or whenever we get that information.

Ellegood: Based on the discussion so far, I think there is a lot of discussion that needs to go on. I propose that you table this item until our next meeting. I'll direct our staff between now and the next meeting to get with any members of the board that are interested to sit down and discuss the right-of-way acquisition process, the laws associated with that, and the tight public arena we have to operate in. Having been in business myself for 22 years, I'm with you. It's kind of a negotiation and so forth. I have found, though, in the public sector there are rules that apply to public agencies that don't apply to the private sector that we've got to follow, and they are constraining. So, there is sort of this bureaucratic but wicked dance that our Right-of-Way staff needs to go through in order to acquire property based on the law. I recommend that we table this item. Between now and the next FCAB meeting I will ask Jim Schwartzmann to meet with Mr. Saager, Mr. Ward, Ms. Long, and any other board member that may be interested, to go over the process with them and see if we can reach a proper business-like accommodation.

Lemmon: Tim, is there any other Project Resolution out there that would allow you to go forward in dealing with this property?

Phillips: Yes, the original Higley Resolution allows advanced land acquisition.

Lemmon: So you do have a way you can continue to negotiate if you wish.

Phillips: Yes.

Ellegood: My understanding, correct me if I'm wrong Mr. Phillips or Mr. Patterson, is that this is not time dependent. We're doing advanced property acquisition in an effort to make sure that the

property is there when we need it, so we don't have to go into condemnation. I think we have time to sit down and learn from our board and certainly explain to our board some of the issues in the arena that we have to deal with and see if we can't reach an agreement. I agree with you, I think we pay too much for this stuff and we get stung every time . . .

Saager: Mr. Ellegood, we go through this same book, the 15th chapter, every time we talk about appraisals and acquisitions, it seems like it never gets addressed until it tries to get pushed through a hearing such as this. That's my sense. You might all hear me out as being arrogant, but I'm here for a reason. This isn't a club - this is to represent the taxpayers. You even said yourself, Mike, at the last meeting that we're going to be facing cuts. We have to look at this thing pretty seriously. You are the best administrator I've worked with ever as a bureaucrat, probably because you've seen both sides of the fence. You know yourself that we're having cutbacks here and if we're having cutbacks and want to get this project through and there's not a better guy to do it, as we all know, than Tim Phillips, but we have to look at it, not just for the taxpayers' sake, but internally.

Ward: Let me make a recommendation. Let's have Mr. Patterson come up from the City of Chandler and ask him to talk a little bit. Maybe there is a way in the acquisition that we can get the seller to dedicate the right-of-way to the City of Chandler right away. The building to the left of the site, on the other side of McQueen, is a wastewater treatment plant for the City of Chandler and we're right in the path of the airport, so I think Mr. Saager's comments might have some foundation.

Bryan Patterson: Thank you for the opportunity to come and speak before you today. I'd like to begin by thanking Mike and Tim and the rest of the County staff for pulling this deal together. Those of you that know what's going on in southeast Chandler, recognize that vacant land is rapidly disappearing and the values are going up virtually as we speak. To begin with, I would like to address the land acquisition process that was outlined for you here. It is very similar to what we do in Chandler. We typically get the title report, get an appraisal, do a review of that appraisal, look at other properties that we purchased in that area to make sure the appraisal looks reasonable to us, and then we make an offer. If we can't come to an agreement, we then go into the condemnation process. I think condemnation issues are kind of a key difference between public agencies and private acquisitions. This is something government has that private parties don't have at their disposal. So the issue of going out and getting several appraisals does really force you into going with the highest appraisal you get. We also get, basically, just one appraisal on a property. We view this site as a prime site for a basin, as you can see it's off the end of the airport. We had intended to purchase part of that property at the very north end for runway protection as an area that we need to keep clear of any obstructions and as we do need that for clear zone, so we don't want to see any structures and a basin certainly lends itself to that. We are also looking at using this as part of our Paseo Project. I don't know if you've heard of our Paseo Trail System along the Consolidated Canal. This ties directly into the Paseo Linear Park System that we have and we view this as a great recreational opportunity. We're also looking for potential use at the north end as a police-driving track. We need a place for the Police Department to put down some asphalt and do their maneuvers that they encounter in the field. We are looking at doing that at this location with the understanding that it would not interfere with the retention aspect of that basin. There are a number of things that are really positives about this site and going ahead with the acquisition. The City required dedications for roadways. Our standard dedication requirement would be 65 feet from the centerline end of the property. I'm not sure how much we have already, but on both Queen Creek and McQueen Road we'd be looking for a 65 foot roadway set aside from the center line. It looks like there is close to a quarter of a mile frontage on McQueen and a little less than that on Queen Creek, but we've not calculated that area. We would certainly take that into account in negotiating the acquisition. As far as where we are at in the process in Chandler, tomorrow night on the Council agenda we have a Memorandum of Understanding that would allow continued talks and the appraisal process to

proceed and continue working toward an acquisition. At this point, we don't have an agreement – even if you pass this agreement today – it would not be an agreement because we don't have one to take before our Council at this time. We plan to take the formal IGA forward in about a month. At this point we are doing this with the idea that County staff can go ahead and start the process. It is a very lengthy process to buy property. Something like this would normally take six months or more to make it happen. This is really the first step on the City's part that we agree we want to go down this path. If the County says they want to go down this path as well, we start that ball rolling. There are a lot of details yet to be worked out, as you can tell, we haven't even talked to the property owner about actual square footage, roadway dedications, and anything else. That's all part of your standard purchase process.

Saager: Mr. Chairman, there is a motion out there.

Ward: Do I hear a second.

Long: Can we repeat the motion.

Saager: Mr. Chairman, I concur with the recommendation of Mr. Ellegood that you, Shirley and I, if you are available, meet with staff and table this as Mr. Ellegood suggested to next month so we have a better understanding of where we're at with things. It's interesting to note that this process takes six months and we have just started this process. Again, I don't know why this is being presented to the Advisory Board, but I say that we defer this to at least next month's meeting.

Long: I'll second that.

Ward: I have a comment first of all. I've known Bryan Patterson for a long time and I really applaud the way the City of Chandler works, they're very thorough in what they do. The location as Bryan said can have multiple uses to it. It's at the end of the airport, so I applaud you for coming up with uses that are going to mitigate any type of flight hazard. It's across from a wastewater treatment plant, so you can use excess effluent to irrigate athletic amenities. The two people sitting next to me have years of experience in real estate and I applaud them for stepping up and suggesting that we help staff take a look at what's going on.

Ellegood: Let me try to officially word a motion for the benefit of our recording secretary. It is moved and seconded that Agenda Item 3 be tabled to the February FCAB and direct the staff in the interim to meet with members of the Advisory Board to discuss acquisition procedures and concerns of individual board members.

Saager: We want to get the punch list of a couple of questions that haven't been able to be answered at that meeting. I don't want to go to another meeting for a discussion, I want to see some documentation of some of the questions I asked.

Ellegood: I would ask you, Mr. Saager if you would, Kathy has done a good job taking notes, but I want to make sure we cover all these bases. I agree with you, you have asked several of these questions in the past and I'm not certain they have been adequately answered in the interim. So let's make sure we have the questions properly written down . . .

Saager: Isn't this being recorded though?

Ellegood: It has been recorded, I just want her to get with you when she gets her notes together to make sure we've got all your questions covered.

Kathy Smith: When I transcribe the tape, I will send you a copy to make sure we've covered everything.

Saager: Great that's perfect.

Ellegood: Just so we make sure it's done right and let's do that fairly quickly too.

Ward: As a side note, what I'd like to do is see if we could maybe go out and visit with the City of Chandler and have Tim (Phillips) and Jim (Schwartzmann) come. For me, being on this board, I'd like to see how that process works with the City and see what Jim does. So we're not on a witch-hunt with Jim, I'd like to see how this public procedure works.

Ellegood: Mr. Chairman, I would encourage that, the only caution I have is that if there is more than three . . .

Lemmon: If there are three or more it would become a public meeting and we'd have to notice it.
Ellegood: I would suggest that, with Ms. Long's concurrence, perhaps Mr. Ward and Mr. Saager could represent the board just so we don't have a formal board meeting and have to notice it and have Julie and the recording secretary out there.

Saager: Jeff (*sic*) and I will make that happen. You're not getting your feelings hurt, are you Shirley?

ACTION: It was moved by Mr. Saager and seconded by Ms. Long that members of the Flood Control District staff meet with Mr. Ward and Mr. Saager prior to the February FCAB to address several questions and concerns raised by the Board members and that this item be tabled until the February FCAB. The motion carried unanimously.

4) SKUNK CREEK WCMP ADOPTION RESOLUTION

Marilyn DeRosa, Project Manager, presented Resolution FCD 2001R011, requesting approval for adoption of the recommendations made through the Skunk Creek Watercourse Master Plan.

There are five recommendations, which include the following:

1. Regulate the erosion control zone as a non-encroachment area.
2. Develop a voluntary acquisition program for homes in the highest hazard areas.
3. Implement a flood warning system for those same homes.
4. Prepare a monitoring and maintenance program.
5. Continue master planning in the watershed.

There are some costs the board is being asked to approve, so the Resolution includes a request to adopt the results of the study as well as approve funding for one of the components of the project.

The goals of this study, as in all watercourse master plan efforts, are to:

1. Protect the residents from flooding and erosion damage.
2. Consider Structural and non-structural flood control
3. Minimize flood control and emergency management costs (current and future)
4. Consider multiple-use opportunities
5. Develop a plan to be implemented with public and municipal support.

Whatever guidelines were developed upstream in Skunk Creek had to be compatible with structures and plans that were downstream. The project was done, always keeping an eye towards not wanting to replace infrastructure downstream, knowing what the capacity downstream was, and how to insure that no retrofit needed to occur downstream.

The issues looked at included what the flood hazards looked like, the depths and velocities, the erosion hazards, knowing there were erosion issues and wanting to characterize them, particularly with respect to the location of several residences along the corridor. There is a potential for future encroachment because there is a lot of private property along the creek and a lot of opportunity for lot splits. The District knew there was a large potential for future encroachment and dense, mature vegetation so there was potential for environmental impacts with that encroachment.

The study process included:

1. Public participation.
2. Surveying and mapping.
3. Hydrologic and hydraulic studies.
4. Looking at sedimentation and lateral migration studies.
5. Looking at environmental and recreational analyses.
6. Developing flood mitigation alternatives.
7. Making recommendations.

The recommendation was to go with a low-impact structural alternative. A non-encroachment area was identified which is effectively the 100-year floodway and the lateral migration erosion hazard zone. Staff felt there was an increase in public safety over the existing regulations, allowed use of the floodplain properties when there is no adverse impact to public safety, and that it was compatible with the City of Phoenix Flood Hazard and Erosion Management Zoning District.

Questions

Ward: Marilyn, I want to compliment you on a great presentation. I have friends that live, not along this waterway, but in the area and it's a beautiful area. It's interesting to see the erosion that takes place. I compliment you again on not wanting big concrete basins throughout this, because these picturesque areas are full of beautiful foliage and animals and birds and if we could maintain that type of look, good solution.

Long: When did FEMA do its 100-year delineation?

DeRosa: The original floodway/floodplain delineation was completed in 1988. There was an update in 1994.

Long: Where the conclusions the same both times? Or do you mean they upgraded to 100-year the second time?

DeRosa: The floodway and floodplain were delineated as early as 1989, but there was no associated study with respect to the hazards. We knew that a floodway and floodplain existed, but we also knew that there were some erosion hazards in this corridor and we knew there were some homes in the floodway. So we characterized the hazards at those specific residences. Part of this study was to go back and say at this particular house, what is the velocity, depth of flow, and what return interval would flood this home. Previous to that, we had a floodplain delineation study that showed if someone were in a floodway, but didn't give specific hydraulic characteristics at that location.

Saager: I want to echo your comments about Marilyn's presentation and I also want to go on record to say that I appreciated Tim Phillips presentation. I want you to know that my remarks earlier are not about Marilyn, they're not about Tim. A finer more qualified professional I haven't worked with than Tim Phillips, and I've worked with a few of them. My comments were not derogatory in nature; it's not about any of your staff, Mr. Ellegood. It's just that we are here for the taxpayers, and I know you know that and your staff knows that. I just think that we need to get a better handle on land acquisition. With that, I asked Chairman Ward that if there was enough for a quorum, if I could be excused. I have an engagement with my family that I had committed to prior to this meeting.

Ellegood: Mr. Saager, your earlier comments are certainly well taken and I genuinely appreciate the perspective that this board brings, particularly folks like yourself. I do think it keeps us on our toes and gives us some new ideas, so the points are well taken. With respect to this specific project, it's very unique in a number of ways. The genesis of this project started with Mr. Acuna, who is sitting in for Mr. Callow today. Mr. Acuna came to us back about three and a half years ago and said let's see if we can't do a study on Skunk Creek because we are interested in preserving part of this with the Phoenix Desert Preserve. At that point a number of us already felt

there was so much encroachment up there, we couldn't save it. Frankly, it was Mr. Acuna who gave us that suggestion and we went ahead and did it. The second thing I'd like to point out is that it's important to separate – and Marilyn did a great job of it – the erosion hazard vs. the flooding hazard. Certain watercourses, not so much in the east valley and not so much in the southern parts of Maricopa County, but in the northern tier where water comes off the mountains that are highly erodible, the erosion hazard is substantially greater than simply getting water in someone's house. This was recognized by the Department of Water Resources back in, I think, 1996 when they came up with a state standard for erosion hazards that we applied to this and we are applying this to where it's appropriate in other watercourses. This was the first study completed ever for that. Certainly the interim flood warning system is a complete new change, and it was not without a great deal of discussion internally that we embarked on that. We felt that if we used the traditional warning system, by the time we finally alerted folks, they'd be floating downstream, so we felt we had to shortcut that and our flood warning system folks and Marilyn came forward and said let's try it. We checked with Risk Management and we put it in place and we think it can work. We've tested it, the first time it didn't work but the second time it did work and we're comfortable now that we've got a system that will keep people safe until we can get this acquisition done.

Acuna: Thanks for the acknowledgement, Mike, but it really belongs to the District. I think the watercourse master plan is a complete evolution of where I think you want the District to be. Look at the Arizona Canal Diversion Channel, which is an engineers dream come true, but it represents an era that's by-gone. We're never going to see concrete channels like that again. We're going to look at watercourse master planning where we work in concert with the environment. I think it's harder to do it, it involves more skills, it involves more consensus building with the public, and I think completion of this watercourse master plan demonstrates that not only can you folks do concrete channels but you can do environmentally friendly watercourse master plans. That's a great reflection on your organization.

ACTION: It was moved by Mr. Cherrington and seconded by Mr. Acuna to approve staff recommendations. The motion carried unanimously.

5) STATUS OF THE FCD FY 2002 BUDGET AND PRELIMINARY FCD FY 2003 BUDGET

Michael Alexander, Management Analyst, presented the preliminary FY 2003 budget and an update of where the District stands financially through the second quarter of FY 2002.

Mr. Alexander referred to two handouts he distributed to the board members. The first was a memo from Sandi Wilson with the Office of Management & Budget concerning the budget process. The second handout was a policy setting forth the guidelines for developing the budget for the District. From this material, three primary things of importance came out. First of all the District will be receiving only \$45 million in secondary tax revenue in FY 2003. The one-cent increase in the tax rate was not approved, and in fact, the District's rate in 2003 will be decreasing. The second item is that Results Initiative Requests (RIR), which have been traditionally the District's method of requesting greater funding than base budget, will be discouraged by OMB. Finally, there will be no funding of salary adjustments during FY 2003.

Mr. Alexander advised the board that the numbers he is presenting would most likely change. They will change because the District has not received all the information from OMB. Needed budget figures include Internal Service Charges, Central Allocation of Overhead, and the Operating Budget Target, which was only received yesterday.

Mr. Alexander went over the forecasted revenue and ending fund balance. The District expects about \$9.5 million less in revenue next year than what was hoped to receive this year. The primary contributors to that are Intergovernmental Payments, which reflect the District's partners inability or reluctance to participate in projects, and secondly land sales that will be going down in anticipation of the land market. Mr. Alexander anticipates that the District will end FY 2002 with a fund balance of about \$14.5 million. Because the revenue will be down, operating expenses will essentially be flat and there will be a significant reduction in CIP expenditures. He anticipates that the District will end the fiscal year at about \$14.5 million, which is approximately where they have to be to carry into FY 2004. Mr. Alexander stated that the overall operating budget would increase about 1.2% above the budget from the current fiscal year. Total CIP expenditures are anticipated to decrease rather significantly next year and that is reflective of the District's less than hoped for revenue.

Mr. Alexander then discussed the December ending revenue. He anticipates that the District will come in very close to budgeted total revenue except about a \$4 million shortfall in Partner Participation. Mr. Alexander went on to the year-to-date budget vs. year-to-date actual variance and percentage. Traditionally, the District has spent somewhere between 35% to 40% of its total operating budget in the first six months of the year and the rest in the second six months of the year. Given that, the District is not very far off that this year. Although the District has a fairly healthy positive variance to budget, it is anticipated that most of that will be spent in the last six months of the year and will come in about on budget as far as the operating expenditures.

Discussion

Cherrington: Why is that?

Alexander: I did not recognize that as a problem until a couple of months ago. We are taking a very close look at our ending fund balance month to month, and when I recognized it as a problem we started an investigation. I'd be happy to talk to you next month about what we found out.

Cherrington: Just a comment, I have to do this same kind of thing where I work and what I usually find is the reason is because they have money left in the budget at the end and they go out and find things to spend it on. I hope that's not the case.

Ellegood: I would withhold a definite answer until next month because we are still looking into this. It appears, at this point, that a lot of it has to do with our CIP cycle. We'll crank up and go through the consultant procurement process for new studies, plans and designs. We start in August, a little bit in the fall and spring and then we start spending money as these consultants come on board throughout the year. The same is true with construction and land acquisition seems to fall in there as well. It just seems that the first quarter at least of every fiscal year, we sort of get ready for the rest of the year and get our scopes of work together. By next month we'll have better data.

Cherrington: If you know that's your typical cycle and you do it that way, that's the way you ought to budget your money.

Ellegood: That point is well taken, Mr. Cherrington, and I think as we get a little more sophisticated and a little more definitive we'll be looking at those kinds of things.

Alexander: Depending on what we find out in the investigation, if in fact, there are perfectly good reasons for why our expense distribution is the way it is, then we most assuredly will change the monthly distribution in the budget.

Ward: I think it's very important that your client municipalities step up and pay their share and have your people work hard to negotiate if we are going to do work for them. I don't see a very good trend in your favor.

Ellegood: Certainly I agree. We're not going to be left holding the bag. These are Intergovernmental Agreements that are contractual in basis, so ultimately it will get paid. A lot of

it deals with our own cash flow and how things are coming down, but we're confident our client cities will come forth as they have committed to do so.

ACTION: No action was required – for information and discussion only.

6) PROPOSED FY 02/03-06/07 CIP BUDGET AND FIVE YEAR CIP (DRAFT)

Dick Perreault, CIP/Policy Branch Manager, presented the Status of this year's CIP and the draft CIP for next year. He indicated that the numbers will likely change between now and May when the Board approves our budget and the CIP.

In July, the District began with a CIP budget of \$58 million, but because of some funding revenue shortfalls, the budget was drawn back to a \$52.3 million CIP expenditure forecast. The biggest changes that have happened since the budget was put together is that the District is forecasting that they will receive about \$7 million less in cost sharing for CIP projects than they originally thought. That has been offset by approximately \$11 million in construction that was forecasted to happen this year that now will not, most notably due to the lack of getting the Laveen projects underway so far this year. The good news is that the District won't spend as much as they thought; the bad news is that the projects are behind schedule since the IGA's and the Development Agreements have held them up.

Mr. Perreault went over the major projects that either have been completed or will soon be completed this fiscal year.

Discussion

Long: In regards to Phase II of Rio Salado, when you mentioned that you hope it all works out regarding the money issue and waste removal, does that include the hazardous waste?

Perreault: We think that there is no hazardous waste on site, but there is always the potential that we could run into some. There are procedures and specifications within the contract that would allow for handling that. What I'm talking about is primarily the non-hazardous-type municipal waste. We had a lot of it in Phase I.

Long: Who is responsible for the hazardous waste removal?

Perreault: Our IGA with Phoenix says that we will pay for the first \$100,000 worth for removal and then we share it after that.

Long: Do you anticipate it being more than \$100,000?

Perreault: I hope there is none, but we didn't hit any hazardous materials on the first job. Hazardous materials are classified and handled much different than just normal municipal waste or construction rubble. At this point we've not hit any. There was some concern about the run-off from the large fire that took place in that area in Phoenix a couple of years ago because the run-off went into the river. We did extensive testing in that area and found that the soils are basically clean of contamination. We did a lot of testing out there just to preclude running into hazardous material, but there's always that risk.

Long: Those of us who have lived in the area a long time realize that it's a dumping ground, so I was just wondering if you were prepared. So, it is \$100,000?

Perreault: That's for the hazardous material. We've actually got an allowance in the construction contract of \$1.1 million to remove municipal waste and construction debris. Thus far, we've hit just a few little pockets, but nothing of any consequence. We're hopeful that we're going to finish this contract without having to use that allowance.

Ellegood: During Phase I, we got surprised, if you will, when as we constructed the channel we encountered a rather significant municipal waste deposit that was basically construction debris,

old tires, etc. This ended up in a rather significant Change Order to our construction contract to pay the contractor to remove that and then dispose of it properly. As a result of that experience, we got a lot smarter and we took substantially more soil testing and soil borings to see what was down there. As Mr. Perreault pointed out, we were a little bit concerned about possibly some contaminated soil as a result of run-off from the fertilizer fire that occurred a year or so ago in South Phoenix. We did extensive testing in that area and found that it was safe. So far, our testing has paid off because we haven't found anything significant down there. We're very optimistic that the \$1.1 million allowance that we put in there, in case we hit any municipal waste, won't be spent.

Long: Does the City of Phoenix pick up any of that?

Perreault: Of the hazardous waste, over the \$100,000. If you remember, our agreement was amended about eight or nine months ago. Initially, the District was limited to \$11 million in total expenditure on the Rio Salado Project; the agreement was amended to up it to \$18 million. So we are working within that \$18 million limit currently.

Cherrington: Did you not do the borings and things before you entered into the agreement? I assume you knew where old official landfills were. Was this just illegal dumping that surprised you when it showed up?

Ellegood: If the truth were known, in Phase I we thought we took enough borings, but we didn't. Frankly we missed a significant dumping zone. As a result, we had to come back to this Board and to the Board of Supervisors for a significant Change Order in the contract in Phase I. Because of that and because of the economics of including that as a bid item in Phase II, we had a bid allowance item included in the contract for \$1.1 million.

Cherrington: Had you known, let's say you took the right amount of borings and found more stuff in the borings, what would it have changed, just the cost of the project? Would you still have done it if you had received a different report?

Perreault: One of the things we would have had is a bid item for it. All the contractors would have bid knowing that there was the possibility of municipal waste there. In this case, we didn't have a specific bid item for it, so it was a negotiated amount with the contractor.

Ellegood: We got into some pretty heavy discussions with the City of Phoenix about this, but we weren't certain whose responsibility that was.

Mr. Perreault said that looking forward to next year's CIP and Five-year program, there are six new projects that are not currently in the Five-year CIP. Actual CIP expenditures in the 2000 budget were \$61.4 million, in the 2001 budget they were \$58.5 million, in the 2002 it is currently anticipated that it will be \$52.3 million, and next year it will be down to \$50.6 million. If there are any changes in the revenue forecast, that number will most likely go down.

Discussion:

Cherrington: What changed on your spreadsheet, just Doubletree?

Perreault: We've added the other five new projects. The projects we'll be dropping off are the ones that we'll be finishing this year. Mr. Cherrington, I think your question is "How did the Doubletree Project get inserted in next year's budget?" What we ended up doing affected three other projects – the Bethany Home Outfall Channel Project, Bullard Wash Phase II Project, and the East Maricopa Floodway Basins – we had to move some of the monies around on those projects. We reduced the BHOC Project by \$4.5 million next year and added those monies back in over the next two years. On the Bullard Wash Phase II Project, we delayed expending \$1 million and will be adding it back into that project's budget the following year; we are delaying the excavation of the EMF Basins, amounting to several million dollars in the hope that we can find a project partner or dispose of the dirt at no cost to us.

Cherrington: Looking at the Bethany Home Outfall Channel, what does the remaining FCD expenditures on this chart mean?

Perreault: You're referring to Table 3? Table 3 is, as of this point, what we have identified as project costs that the Flood Control District has not yet expended.

Cherrington: So when you just said that the BHOC is being expended . . .

Perreault: It will be beyond the Five-year Program.

Cherrington: But this \$25.9 million is within the Five-year?

Perreault: That would be beyond the Five-year.

Cherrington: So this isn't the Five-year?

Perreault: No, definitely not.

Cherrington: So when it says Summary of CIP Projects, isn't CIP five years?

Perreault: The schedule that is in your booklet is the Five-year Program. Table 3 shows the projects that have been prioritized and have yet to be completed.

Cherrington: We don't have anything in our possession, I don't think, that shows how you have shifted those funds to those projects to allow Doubletree to be in this.

Perreault: No, but as I mentioned there are three projects that we impacted. We delayed excavation that was scheduled in the current Five-year Plan for the EMF Basins. That's a unilateral project, so we can delay the excavation of those and it will give us more time to do some dirt brokering.

Cherrington: You're telling me this and I believe you, but I can't determine that by looking at this. In fact, if I look at this, for example the BHOC, there's more money in here than there was last time I saw this chart. The last time it was \$24.7 million.

Perreault: Our estimate may have gone up since the last time we did that.

Cherrington: So this chart really doesn't tell us that cash flow?

Perreault: No it doesn't.

Long: There were three projects?

Perreault: The Bethany Home Outfall Channel Project is still going to be completed, it's just that we've moved some monies around in the next three years to allow the Doubletree Project to proceed. For the Bullard Wash Phase II Project, we delayed \$1 million from next year into the following year and the Town of Goodyear was happy with that. The one that took the largest impact was the East Maricopa Floodway Basin Projects. We were going to start doing the excavation of these basins next year and we've decided now to delay that for a few years. One, since we don't have a partner, but secondly we think we are going to be able to work something out with ADOT when the San Tan Freeway comes in – they're going to need a lot of dirt.

Cherrington: How does the Flood Control District determine, based on the prioritization score, that you are going to insert one with a lower score, it appears priority-wise, over one with a much higher score. Does that not mean anything?

Perreault: It does mean something initially. That's the initial score that it gets when the committee prioritizes it. In order for a project to become a reality, we have to have the project designs completed, Intergovernmental Agreements must be in place, and we have to have the funding. In the case of the Doubletree Project, we already had the designs completed, we had a willing partner, we were able to consummate the IGA and then it was just to find the resources to implement it.

Cherrington: With respect to the EMF, you don't have partners and it makes more sense to delay those projects.

Perreault: We know that the EMF Basins are going to be a long-term project. They're just so large and there is so much that's going to have to be excavated. And, there is the potential that we can get someone else to help excavate them as part of another project, so we thought that was a smart one to take away.

ACTION: No action was required – for information and discussion only.

7) COMMENTS FROM THE CHIEF ENGINEER & GENERAL MANAGER

Mike Ellegood pointed out that we were carrying the Doubletree Project in the CIP but it was unfunded and was shoved sometime into the future. Just shortly after Christmas, Mr. Ellegood received a phone call from Supervisor Stapley's office – who was about to become the Chairman. Mr. Stapley indicated that he was going to be the Chairman and wanted to have the full Board of Directors, the County Board of Supervisors, hear the Doubletree Ranch Road Drainage Project. Mr. Ellegood said he was directed to prepare the Board Agenda Item and that it be heard on January 3, 2002. The Project was presented and it passed, not without a great deal of discussion, but it did pass unanimously. Mr. Ellegood acknowledged that Ms. Shirley Long was present at the meeting and spoke her mind, but also reflected the comments of the Flood Control Advisory Board. The Board was represented very eloquently and statesman-like by Ms. Long. This was debated at the Board level, in fact one Board member actually made a motion – that died for lack of a second – that it be sent back to the Flood Control Advisory Board for yet a third time. The big concern at the Board level was not the merits of the project, but was the fact that it was going before the Board having been defeated twice by the Flood Control Advisory Board. I share that with you just to indicate to you that your vote and wishes were certainly well considered.

Mr. Ellegood apologized to the Advisory Board because at this point in time they should have received a budget that they could review, take apart and approve. Unfortunately, the budget guidelines were just received and they were incomplete. Mr. Ellegood mentioned that the budget guidelines do not appear to be something the District would want to live with. He feels a need to go back and negotiate the guidelines. For example, it is absolutely imperative that the Dam Safety Program be moved forward, but it has been dropped off and not funded. Mr. Ellegood stressed that the District must keep doing this, both for public safety and in an effort to assure the chances for Federal funding. Secondly, the District was asked earlier in the year to identify several voluntary reductions this fiscal year. The District made a voluntary budget reduction of about \$0.5 million, indicating that \$130,000 could reoccur next fiscal year, but that the remainder would have to be included in the next fiscal year's budget. The Office of Management & Budget did not take that into consideration as they gave the District their budget target. In addition, there are a number of potentially significant budget items that the District has not received figures for in order to put together a budget that can be shared. Mr. Ellegood suspects that the District will have to submit a preliminary budget by February 1 and that they will have to make some assumption that will have several iterations. Mr. Ellegood noted that the Board would be given an update next month on the budget process. Finally, Mr. Ellegood thanked those Board members that contacted their Supervisor indicating their concerns about the District's budget. He wished the Supervisors had been more receptive to those concerns.

Mr. Ellegood asked Julie Lemmon to give the Board an update on the current litigation issue the District has with the State Land Department. Ms. Lemmon referenced a letter that was copied to the Advisory Board from the State Land Department regarding the District's easements for structures located in Pinal County. The letter raised the issue stating that the District's easements for those structures were void. They are very old easements obtained in 1964. In 1967, there was a United States Supreme Court case regarding State Land that dealt with, what was allowed under the State law, free easements to structures and facilities that benefited State Land and that the United States Supreme Court said under the Arizona Enabling Act that was not, in fact, allowed. However, the Supreme Court had a footnote in there that said, in this case we are not going to look back at things that happened before 1967. There are many of those in Arizona, called 09 documents, and many different counties, cities, the Flood Control District, and others have these documents that predate that decision. In the District's investigation, the conclusion was reached that what the District needed was, in fact, a court ruling on what the status of those easements

were. Whether they were, in fact, affected by that decision in 1967 and they were invalid or whether they continue to be good easements, in which case the District held proper title to the property for the construction of the dams. The District would not have built a dam on an easement that they didn't feel was a long-term document. The Soil Conservation Service funded those, so the District has agreements with them, bringing in yet another Federal agency. Also, in looking at the structures, they protect several reaches of the Central Arizona Project Canal and that area that runs along there. There are a couple of Federal agencies that are interested we have named in our litigation. The Natural Resources Conservation Service, because of our agreements with them, we need the Court to tell us what will be our status depending on the validity of the easements. Ms. Lemmon told the Advisory Board members that she has extra copies of the lawsuit and would be happy to share them with anyone that would like to take a look at them. As of January 7, after having advised the Board of Directors and receiving, in open meeting, their approval to go forward, the District filed a Declaratory Judgement Action in Federal Court against the Arizona State Land Department and the Natural Resources Conservation Service asking for clarification of the District's easement right and also asking for a temporary injunction to keep the District at status quo, so they can keep maintaining the structures and they won't be charged for their continuing presence out there until such time as this underlying legal issue can be resolved. There have been several suggestions by individuals associated with the Land Department that this is something that should be negotiated. There may be room for some negotiations, but first that underlying legal question as to the validity of the easements needs to be resolved, so that will be the first goal. Ms. Lemmon noted that it could be a very significant litigation and that the District is hopeful to have a fairly quick resolution of the legal issue as to the validity of the easements.

Mr. Ellegood mentioned that the outcome of the legal issue has major significance to the municipalities, the Salt River Project, and counties throughout the State of Arizona. If the District's easement is vacated, then a number of easements that were entered into prior to 1967 by the City of Phoenix, Salt River Project, and other entities throughout the State are also invalid because just this one can't be picked. The significance to the taxpayers of the State is huge. There are 986 of these easements; roads, canals, and municipal uses are all built on these easements and may perhaps be void. Mr. Ward asked who instituted this challenge? Mr. Ellegood said that the State Land Commissioner instituted it, probably for good reason. The District has 19 thousand acres of easement in Pinal County on which the District has constructed three structures, impoundment areas, outfalls, and spillways, etc. The land has increased in value and with the District's easements on it, State Land can't develop it and can't acquire full market value. Mr. Ellegood doesn't fault the State Land Commissioner's interest in protecting the Trust, but suspects now since this box has been opened, this is a question that needs to be answered and the implications throughout the State are very substantial. Ms. Lemmon stated that Mr. Ellegood made the comment that the District's easement renders the State Land valueless. That's not, as far as she knows, a fact. It's just perhaps a consideration that the Land Department is taking into consideration. There has been development on this easement – there is a school and some other structures, which are mentioned in the lawsuit.

Mr. Ellegood commented that there are currently seven bills going through State Legislature that the District is tracking. A list was prepared and distributed for the Advisory Board members to review at their leisure. Mr. Ellegood did point out House Bill 2410: Eminent Domain. The actual wording of the Bill requires, "Property value is to be determined by the estimated highest price it could bring on the open market. If an owner prevails in a contested condemnation and wins 10% more than the government's offer, the court must award the owner fees and costs." We're in this governmental system that has been hammered together as a result of previous legislation. Mr. Ellegood also mentioned House Bill 2411: Flood Control District Audit. Mr. Ellegood mentioned

that Representative Leff, who opposed the Doubletree Ranch Road Drainage Project, introduced this particular bill. Mr. Ellegood said that the District welcomes an audit and noted that they get audited every year anyway. Finally, Senate Bill 1115: Sand and Gravel. This bill imposes some additional requirements for Sand & Gravel Operations and the District will watch to see what happens there.

Shirley Long asked if she could throw something out to the Board and Mr. Ellegood for consideration. Ms. Long expressed concern that as a flood control board, there is a responsibility to look at a total water picture, not just what can be diverted, but what can perhaps be saved. She suggested that the Flood Control District could take a proactive water conservation approach to the idea of dry wells. Ms. Long said she would be happy to pull together any information needed, if this is taken under consideration. She thinks this would be a very cost-effective way of replenishing the Aquifer since the direction of the Flood Control District is much more proactive. She noted the \$4 billion spent in bringing water in from the CAP and the millions of dollars that the Flood Control District utilizes to divert water. She suggested that if the District utilized a fairly inexpensive system to save some of this water and replenishing the Aquifer, that perhaps the total approach the Flood Control District could take with this might be very well received. Mr. Ellegood thanked Ms. Long for her comments. He mentioned that his counterpart in Fresno, California captures all their water and they inject it into the ground. Whether it's feasible here or not, Mr. Ellegood mentioned that it's something that's been on his list of "fun things to do," but he hasn't gotten there but appreciates Ms. Long bringing this up. Ms. Long remarked that California has to and that Arizona will have to do this, but taking a forward looking approach with this, the Flood Control District could make some giant strides for the entire Maricopa County. She indicated that she would be happy in the future to address the Board of Supervisors with this in and assist in any way she can. Ms. Long mentioned that they have put in dry wells on a lot of their properties.

8) SUMMARY OF RECENT ACTIONS

Actions of the Board of Supervisors were included in the FCAB packet.

9) OTHER BUSINESS AND COMMENTS FROM THE PUBLIC

There was no other business or comments from the public.

The meeting was adjourned at 4:30 p.m. by general consent.

Shirley Long
Secretary of the Board

Kathy Smith
Clerk of the Board